

REMARKS/ARGUMENTS

The Examiner rejected claims 1, 3 to 7, 10 and 21 under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 7 to USP 6,331,304.

A rejection of obviousness-type double patenting may be overcome by the submission of a Terminal Disclaimer signed by an attorney or record. Submitted herewith is a signed Terminal Disclaimer, disclaiming the term of the patent to be granted on this application beyond the term of USP 6,331,304, and our cheque in respect of the prescribed fee is enclosed.

Having regard thereto, it is submitted that the rejection of claims 1, 3 to 7, 10 and 21 on the grounds of obviousness-type double patenting, should be withdrawn.

The Examiner rejected claims 1, 3 to 7, 9 to 10 and 21 under 35 USC 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In particular, the Examiner objected to the term "gene" and suggested, instead, using the term "nucleic acid encoding granulocyte macrophage colony stimulating factor (GM-CSF)". The Examiner's suggestion has been adopted and claims 1, 5, 6, 7, 9 and 10 amended accordingly.

Having regard thereto, it is submitted that claims 1, 3 to 7, 9 to 10 and 21, insofar as they remain in the application and in their amended form, are no longer open to rejection under 35 USC 112, first paragraph.

The Examiner objected to claim 4 under 37 CFR 1.75(c) as being improper dependent form. Claim 4 has been deleted, thereby obviating the rejection.

It is believed that this application is now in condition for allowance and early and favourable consideration and allowance are respectfully solicited.

Respectfully submitted,



Michael I. Stewart
Reg. No. 24,973

Toronto, Ontario, Canada,
(416) 595-1155
FAX No. (416) 595-1163